

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

-AGAINST-

ORDER AND MEMORANDUM
04-CR-1097 (DRH)

NICHOLAS ASHLEY,

DEFENDANT.

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A P P E A R A N C E S:

For the Government:
Benton J. Campbell
United States Attorney
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By: Nicole Boeckmann, A.U.S.A.

For Defendant:
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A/R
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HURLEY, Senior District Judge

By Petition filed on February 29, 2008, defendant has moved to be resentenced pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 (as amended effective March 3, 2008).

Defendant pled guilty on August 15, 2005 with having distributed 5 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(iii). He was sentenced by me on April 5, 2006 to 63 months of imprisonment to be followed by four years of supervised release. Reference to the Bureau of Prisons' website indicates that defendant's projected release date is November 19, 2009.

It is agreed by the parties that the motion is addressed to the Court's discretion. In exercising that discretion, the Court should view the factors listed in § 3553(a) in conjunction with the lowered guideline range triggered by the crack guideline amendment. Here, the initial guideline range in effect at the time of sentence was 63 to 78 months. The current adjusted advisory guideline range is 51 to 63 months. However, the mandatory minimum for defendant's offense of conviction is 60 months, and thus the potential sentence reduction is limited to 3 months.

Having reviewed the original presentence report, the updated presentence report dated March 24, 2009, as well as the submissions of the parties, and having considered the provisions of § 1B1.10(b)(1) and the factors listed in § 3553(a) together with the applicable policy statements issued by the Sentencing Commission, defendant's motion is granted to the extent his period of incarceration of 63 months is hereby reduced to the mandatory minimum of 60 months.

In sum, the judgment imposed on April 5, 2006 is amended solely as just noted; in all other respects, the April 2006 sentence shall remain in full force and effect.

SO ORDERED.

Dated: Central Islip, New York
May 6, 2009

_____/S/_____
DENIS R. HURLEY, U.S.D.J.